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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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11 CORNELIUS LOPES,

No. C-08-4433 MMC

12 Plaintiff,

**ORDER DISMISSING PLAINTIFF'S
FIRST AMENDED COMPLAINT;
GRANTING APPLICATION TO
PROCEED IN FORMA PAUPERIS**

13 v.

14 CITY OF LIVERMORE,

15 Defendant.

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17 Before the Court are plaintiff's First Amended Complaint ("FAC"), filed November 21,
18 2008, and plaintiff's application to proceed in forma pauperis, filed September 23, 2008.
19 When a party seeks to proceed in forma pauperis, the district court is required to dismiss
20 the case if the court determines the complaint fails to state a claim upon which relief can be
21 granted. See 28 U.S.C. § 1915(e)(2)(B)(ii).

22 On September 29, 2008, the Court dismissed plaintiff's original complaint for failure
23 to state a claim. The Court noted plaintiff had "failed to allege his constitutional rights were
24 violated pursuant to an official policy, practice, or custom of defendants," and granted
25 plaintiff leave to amend to cure such deficiencies. (See Order filed Sept. 29, 2008.) In the
26 FAC, plaintiff has again attempted to plead a violation of 42 U.S.C. § 1983 by defendant

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1 City of Livermore.¹ The FAC, however, has failed to cure the deficiencies noted in that, like
2 the original complaint, the FAC fails to allege plaintiff's constitutional rights were violated
3 pursuant to an official policy, practice, or custom of defendant, and, consequently, the FAC
4 likewise fails to state a claim. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690
5 (1978); Christie v. lopa, 176 F.3d 1231, 1235 (9th Cir. 1999) ("Congress intended to hold
6 municipalities liable only when 'action pursuant to official municipal policy of some nature
7 caused a constitutional tort.'") (quoting Monell, 436 U.S. at 691).

8 Accordingly, plaintiff's FAC is hereby DISMISSED without further leave to amend.²

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10 **IT IS SO ORDERED.**

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12 Dated: December 2, 2008


MAXINE M. CHESNEY
United States District Judge

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26 ¹Plaintiff's original complaint also named the City of Livermore Police Department
27 and the City of Livermore Parks Department as defendants; such entities have not been
named in the FAC.

28 ²Plaintiff's application to proceed in forma paupers is hereby GRANTED.